## DRAFT 1

## SUBSTITUTE FOR

## HOUSE BILL NO. 5851

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending section 5827 (MCL 600.5827) and by adding chapter 30 and section 5840.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

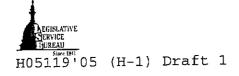
1 CHAPTER 30

- SEC. 3001. AS USED IN THIS CHAPTER:
- 3 (A) "AMA GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT"
- 4 MEANS THE AMERICAN MEDICAL ASSOCIATION'S GUIDES TO THE EVALUATION
- 5 OF PERMANENT IMPAIRMENT (FIFTH EDITION, 2000).
- 6 (B) "ASBESTOS" MEANS ALL MINERALS DEFINED AS ASBESTOS IN 29
- 7 CFR 1910.1001.
- (C) "ASBESTOS CLAIM" MEANS A CLAIM FOR DAMAGES OR OTHER CIVIL

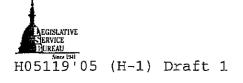
- 1 OR EQUITABLE RELIEF PRESENTED IN A CIVIL ACTION, ARISING OUT OF,
- 2 BASED ON, OR RELATED TO THE HEALTH EFFECTS OF EXPOSURE TO ASBESTOS,
- 3 INCLUDING LOSS OF CONSORTIUM AND ANY OTHER DERIVATIVE CLAIM MADE BY
- 4 OR ON BEHALF OF AN EXPOSED PERSON OR A REPRESENTATIVE, SPOUSE,
- 5 PARENT, CHILD, OR OTHER RELATIVE OF AN EXPOSED PERSON. ASBESTOS
- 6 CLAIM DOES NOT INCLUDE A CLAIM FOR BENEFITS UNDER A WORKERS'
- 7 COMPENSATION LAW OR VETERANS' BENEFITS PROGRAM OR CLAIMS BROUGHT BY
- 8 A PERSON AS A SUBROGEE BY VIRTUE OF THE PAYMENT OF BENEFITS UNDER A
- 9 WORKERS' COMPENSATION LAW.
- 10 (D) "ASBESTOSIS" MEANS BILATERAL DIFFUSE INTERSTITIAL FIBROSIS
- 11 OF THE LUNGS CAUSED BY INHALATION OF ASBESTOS FIBERS.
- 12 (E) "BOARD-CERTIFIED IN INTERNAL MEDICINE" MEANS CERTIFIED BY
- 13 THE AMERICAN BOARD OF INTERNAL MEDICINE OR THE AMERICAN COLLEGE OF
- 14 OSTEOPATHIC INTERNISTS.
- 15 (F) "BOARD-CERTIFIED IN OCCUPATIONAL MEDICINE" MEANS CERTIFIED
- 16 IN THE SUBSPECIALTY OF OCCUPATIONAL-ENVIRONMENTAL OR OCCUPATIONAL
- 17 MEDICINE BY THE AMERICAN BOARD OF PREVENTIVE MEDICINE OR THE
- 18 AMERICAN OSTEOPATHIC BOARD OF PREVENTIVE MEDICINE.
- 19 (G) "BOARD-CERTIFIED IN ONCOLOGY" MEANS CERTIFIED IN THE
- 20 SUBSPECIALTY OF MEDICAL ONCOLOGY OR ONCOLOGY BY THE AMERICAN BOARD
- 21 OF INTERNAL MEDICINE OR THE AMERICAN COLLEGE OF OSTEOPATHIC
- 22 INTERNISTS.
- 23 (H) "BOARD-CERTIFIED IN PATHOLOGY" MEANS A PHYSICIAN WHO HOLDS
- 24 PRIMARY CERTIFICATION IN ANATOMIC PATHOLOGY OR CLINICAL PATHOLOGY
- 25 FROM THE AMERICAN BOARD OF PATHOLOGY OR THE AMERICAN OSTEOPATHIC
- 26 BOARD OF PATHOLOGY AND TO WHOSE PROFESSIONAL PRACTICE BOTH OF THE
- 27 FOLLOWING APPLY:



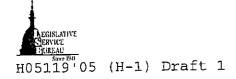
- 1 (i) THE PRACTICE IS PRINCIPALLY IN THE FIELD OF PATHOLOGY.
- 2 (ii) THE PRACTICE INVOLVES REGULAR EVALUATION OF PATHOLOGY
- 3 MATERIALS OBTAINED FROM SURGICAL OR POSTMORTEM SPECIMENS.
- 4 (I) "BOARD-CERTIFIED IN PULMONARY MEDICINE" MEANS CERTIFIED IN
- 5 THE SUBSPECIALTY OF PULMONARY DISEASE BY THE AMERICAN BOARD OF
- 6 INTERNAL MEDICINE OR THE AMERICAN COLLEGE OF OSTEOPATHIC
- 7 INTERNISTS.
- 8 (J) "CERTIFIED 'B' READER" MEANS AN INDIVIDUAL QUALIFIED AS A
- 9 FINAL OR "B" READER UNDER 42 CFR 37.51(B).
- 10 (K) "CIVIL ACTION" MEANS AN ACTION OR CLAIM OF A CIVIL NATURE
- 11 IN COURT, WHETHER DEFINED AS A CASE AT LAW OR IN EQUITY OR
- 12 ADMIRALTY. CIVIL ACTION DOES NOT INCLUDE AN ACTION RELATING TO A
- 13 WORKERS' COMPENSATION LAW OR A PROCEEDING FOR BENEFITS UNDER A
- 14 VETERANS' BENEFITS PROGRAM.
- 15 (1) "ECONOMIC LOSS" MEANS A PECUNIARY LOSS RESULTING FROM
- 16 PHYSICAL IMPAIRMENT, INCLUDING THE LOSS OF EARNINGS OR OTHER
- 17 BENEFITS RELATED TO EMPLOYMENT, MEDICAL EXPENSE LOSS, REPLACEMENT
- 18 SERVICES LOSS, LOSS DUE TO DEATH, BURIAL COSTS, AND LOSS OF
- 19 BUSINESS OR EMPLOYMENT OPPORTUNITIES.
- 20 (M) "EXPOSED PERSON" MEANS A PERSON WHOSE EXPOSURE TO ASBESTOS
- 21 OR TO ASBESTOS-CONTAINING PRODUCTS IS THE BASIS FOR AN ASBESTOS
- 22 CLAIM.
- 23 (N) "FEV1" MEANS FORCED EXPIRATORY VOLUME IN THE FIRST SECOND,
- 24 WHICH IS THE MAXIMAL VOLUME OF AIR EXPELLED IN 1 SECOND DURING
- 25 PERFORMANCE OF A SIMPLE SPIROMETRIC TEST.
- 26 (O) "FVC" MEANS FORCED VITAL CAPACITY, WHICH IS THE MAXIMAL
- 27 VOLUME OF AIR EXPELLED WITH MAXIMUM EFFORT FROM A POSITION OF FULL



- 1 INSPIRATION.
- 2 (P) "ILO SCALE" MEANS THE SYSTEM FOR THE CLASSIFICATION OF
- 3 CHEST X-RAYS CONTAINED IN THE INTERNATIONAL LABOUR ORGANIZATION'S
- 4 GUIDELINES FOR THE USE OF ILO INTERNATIONAL CLASSIFICATION OF
- 5 RADIOGRAPHS OF PNEUMOCONIOSES (2000).
- 6 SEC. 3002. AS USED IN THIS CHAPTER:
- 7 (A) "LUNG CANCER" MEANS A MALIGNANT TUMOR LOCATED INSIDE A
- 8 LUNG. LUNG CANCER DOES NOT INCLUDE MESOTHELIOMA.
- 9 (B) "MESOTHELIOMA" MEANS A MALIGNANT TUMOR WITH A PRIMARY SITE
- 10 IN THE PLEURA OR THE PERITONEUM THAT HAS BEEN DIAGNOSED BY A
- 11 PHYSICIAN WHO IS BOARD-CERTIFIED IN PATHOLOGY USING STANDARDIZED
- 12 AND ACCEPTED CRITERIA OF MICROSCOPIC MORPHOLOGY OR APPROPRIATE
- 13 STAINING TECHNIQUES, OR BOTH.
- 14 (C) "NONECONOMIC LOSS" MEANS SUBJECTIVE, NONMONETARY LOSS
- 15 RESULTING FROM PHYSICAL IMPAIRMENT, INCLUDING PAIN, SUFFERING,
- 16 INCONVENIENCE, MENTAL ANGUISH, EMOTIONAL DISTRESS, DISFIGUREMENT,
- 17 LOSS OF SOCIETY AND COMPANIONSHIP, LOSS OF CONSORTIUM, INJURY TO
- 18 REPUTATION, OR ANY OTHER NONPECUNIARY LOSS OF ANY KIND OR NATURE.
- 19 (D) "NONMALIGNANT CONDITION" MEANS ANY CONDITION THAT IS
- 20 CAUSED OR MAY BE CAUSED BY ASBESTOS, OTHER THAN A DIAGNOSED CANCER.
- 21 (E) "NONSMOKER" MEANS A PERSON WHO DID NOT SMOKE CIGARETTES OR
- 22 USE ANY OTHER TOBACCO PRODUCT WITHIN THE 15 YEARS IMMEDIATELY
- 23 PRECEDING THE DIAGNOSIS THAT THE PERSON HAS A CONDITION OR DISEASE
- 24 THAT IS THE BASIS FOR AN ASBESTOS OR SILICA CLAIM.
- 25 (F) "PATHOLOGICAL EVIDENCE OF ASBESTOSIS" MEANS A STATEMENT BY
- 26 A PHYSICIAN WHO IS BOARD-CERTIFIED IN PATHOLOGY THAT MORE THAN 1
- 27 REPRESENTATIVE SECTION OF LUNG TISSUE UNINVOLVED WITH ANY OTHER

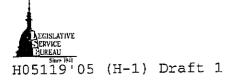


- 1 DISEASE PROCESS DEMONSTRATES A PATTERN OF PERIBRONCHIOLAR OR
- 2 PARENCHYMAL FIBROSIS IN THE PRESENCE OF CHARACTERISTIC ASBESTOS
- 3 BODIES AND THAT THERE IS NO OTHER, MORE LIKELY EXPLANATION FOR THE
- 4 PRESENCE OF THE FIBROSIS.
- 5 (G) "PREDICTED LOWER LIMIT OF NORMAL" MEANS, WITH RESPECT TO A
- 6 TEST, THE FIFTH PERCENTILE OF HEALTHY POPULATIONS BASED ON AGE,
- 7 HEIGHT, AND GENDER, AS REFERENCED IN THE AMA GUIDES TO THE
- 8 EVALUATION OF PERMANENT IMPAIRMENT.
- 9 (H) "PUNITIVE DAMAGES" MEANS DAMAGES AWARDED AGAINST A
- 10 DEFENDANT IN ORDER TO PUNISH OR DETER THE DEFENDANT OR OTHERS FROM
- 11 ENGAGING IN SIMILAR BEHAVIOR IN THE FUTURE.
- 12 (I) "QUALIFIED PHYSICIAN" MEANS A PHYSICIAN WHO HAS ALL OF THE
- 13 FOLLOWING QUALIFICATIONS:
- 14 (i) IS BOARD-CERTIFIED IN INTERNAL MEDICINE, ONCOLOGY,
- 15 PATHOLOGY, PULMONARY MEDICINE, RADIOLOGY, OR OCCUPATIONAL MEDICINE.
- 16 (ii) HAS CONDUCTED A PHYSICAL EXAMINATION OF THE EXPOSED
- 17 PERSON.
- 18 (iii) IS TREATING OR HAS TREATED THE EXPOSED PERSON AND HAS OR
- 19 HAD A DOCTOR-PATIENT RELATIONSHIP WITH THE EXPOSED PERSON.
- 20 (iv) DOES NOT SPEND MORE THAN 10% OF HIS OR HER PROFESSIONAL
- 21 PRACTICE TIME PROVIDING CONSULTING OR EXPERT SERVICES IN CONNECTION
- 22 WITH ACTUAL OR POTENTIAL CIVIL ACTIONS, AND THE PHYSICIAN'S MEDICAL
- 23 GROUP, PROFESSIONAL CORPORATION, CLINIC, OR OTHER AFFILIATED GROUP
- 24 DOES NOT EARN MORE THAN 20% OF ITS INCOME FROM PROVIDING SUCH
- 25 SERVICES.
- 26 (v) IS CURRENTLY LICENSED TO PRACTICE AND ACTIVELY PRACTICES
- 27 IN THE STATE WHERE THE PLAINTIFF RESIDES OR WHERE THE PLAINTIFF'S



- 1 CIVIL ACTION WAS FILED.
- 2 (vi) RECEIVES OR HAS RECEIVED PAYMENT FOR THE TREATMENT OF THE
- 3 EXPOSED PERSON FROM THE EXPOSED PERSON'S THIRD PARTY PAYER.
- 4 (J) "RADIOLOGICAL EVIDENCE OF ASBESTOSIS" MEANS A QUALITY 1
- 5 CHEST X-RAY ON THE ILO SCALE OR, IF THE EXPOSED PERSON IS DECEASED
- 6 AND PATHOLOGY AND A QUALITY 1 CHEST X-RAY ARE NOT AVAILABLE, A
- 7 QUALITY 2 CHEST X-RAY, THAT SHOWS SMALL, IRREGULAR OPACITIES (S, T)
- 8 GRADED BY A CERTIFIED "B" READER AS AT LEAST 1/1 ON THE ILO SCALE.
- 9 (K) "RADIOLOGICAL EVIDENCE OF DIFFUSE PLEURAL THICKENING"
- 10 MEANS A QUALITY 1 CHEST X-RAY ON THE ILO SCALE OR, IF THE EXPOSED
- 11 PERSON IS DECEASED AND PATHOLOGY AND A QUALITY 1 CHEST X-RAY ARE
- 12 NOT AVAILABLE, A QUALITY 2 CHEST X-RAY, THAT SHOWS BILATERAL
- 13 PLEURAL THICKENING OF AT LEAST B2 ON THE ILO SCALE AND BLUNTING OF
- 14 AT LEAST 1 COSTOPHRENIC ANGLE.
- 15 SEC. 3003. AS USED IN THIS CHAPTER:
- 16 (A) "SILICA" MEANS A RESPIRABLE CRYSTALLINE FORM OF SILICON
- 17 DIOXIDE, INCLUDING, BUT NOT LIMITED TO, ALPHA, QUARTZ,
- 18 CRISTOBALITE, AND TRYDMITE.
- 19 (B) "SILICA CLAIM" MEANS A CLAIM FOR DAMAGES OR OTHER CIVIL OR
- 20 EQUITABLE RELIEF PRESENTED IN A CIVIL ACTION, ARISING OUT OF, BASED
- 21 ON, OR RELATED TO THE HEALTH EFFECTS OF EXPOSURE TO SILICA.
- 22 INCLUDING LOSS OF CONSORTIUM AND ANY OTHER DERIVATIVE CLAIM MADE BY
- 23 OR ON BEHALF OF AN EXPOSED PERSON OR A REPRESENTATIVE, SPOUSE,
- 24 PARENT, CHILD, OR OTHER RELATIVE OF AN EXPOSED PERSON. SILICA CLAIM
- 25 DOES NOT INCLUDE A CLAIM FOR BENEFITS UNDER A WORKERS' COMPENSATION
- 26 LAW OR VETERANS' BENEFITS PROGRAM OR CLAIMS BROUGHT BY A PERSON AS
- 27 A SUBROGEE BY VIRTUE OF THE PAYMENT OF BENEFITS UNDER A WORKERS'

- 1 COMPENSATION LAW.
- 2 (C) "SILICOSIS" MEANS NODULAR INTERSTITIAL FIBROSIS OF THE
- 3 LUNGS CAUSED BY INHALATION OF SILICA.
- 4 (D) "SMOKER" MEANS A PERSON WHO HAS SMOKED CIGARETTES OR USED
- 5 ANOTHER TOBACCO PRODUCT WITHIN THE 15 YEARS IMMEDIATELY PRECEDING
- 6 THE DIAGNOSIS THAT THE PERSON HAS A CONDITION OR DISEASE THAT IS
- 7 THE BASIS FOR AN ASBESTOS OR SILICA CLAIM.
- 8 (E) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT
- 9 OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO, THE NORTHERN MARIANA
- 10 ISLANDS, THE VIRGIN ISLANDS, GUAM, AMERICAN SAMOA, AND ANY OTHER
- 11 TERRITORY OR POSSESSION OF THE UNITED STATES OR A POLITICAL
- 12 SUBDIVISION OF A POLITICAL ENTITY DEFINED AS A STATE.
- 13 (F) "SUBSTANTIAL CONTRIBUTING FACTOR" MEANS THAT ALL OF THE
- 14 FOLLOWING APPLY:
- 15 (i) EXPOSURE TO ASBESTOS OR SILICA IS THE PREDOMINATE CAUSE OF
- 16 THE PHYSICAL IMPAIRMENT ALLEGED IN THE CLAIM.
- 17 (ii) THE EXPOSURE TO ASBESTOS OR SILICA TOOK PLACE ON A REGULAR
- 18 BASIS OVER AN EXTENDED PERIOD OF TIME AND IN CLOSE PROXIMITY TO THE
- 19 EXPOSED PERSON.
- 20 (iii) A QUALIFIED PHYSICIAN HAS DETERMINED WITH A REASONABLE
- 21 DEGREE OF MEDICAL CERTAINTY THAT THE PHYSICAL IMPAIRMENT OF THE
- 22 EXPOSED PERSON WOULD NOT HAVE OCCURRED BUT FOR THE EXPOSURE TO
- 23 ASBESTOS OR SILICA.
- 24 (G) "THIRD PARTY PAYER" MEANS A PUBLIC OR PRIVATE HEALTH CARE
- 25 PAYMENT OR BENEFITS PROGRAM, INCLUDING, BUT NOT LIMITED TO, ALL OF
- 26 THE FOLLOWING:
- 27 (i) A HEALTH INSURER.

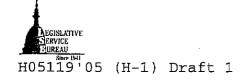


- 1 (ii) A NONPROFIT HEALTH CARE CORPORATION.
- 2 (iii) A HEALTH MAINTENANCE ORGANIZATION.
- 3 (iv) A PREFERRED PROVIDER ORGANIZATION.
- 4 (v) MEDICAID OR MEDICARE.
- 5 (H) "VETERANS' BENEFIT PROGRAM" MEANS A PROGRAM FOR BENEFITS
- 6 IN CONNECTION WITH MILITARY SERVICE ADMINISTERED BY THE VETERANS'
- 7 ADMINISTRATION UNDER TITLE 38 OF THE UNITED STATES CODE.
- 8 (I) "WORKERS' COMPENSATION LAW" MEANS A LAW RESPECTING A
- 9 PROGRAM ADMINISTERED BY A STATE OR THE UNITED STATES TO PROVIDE
- 10 BENEFITS, FUNDED BY A RESPONSIBLE EMPLOYER OR ITS INSURANCE
- 11 CARRIER, FOR OCCUPATIONAL DISEASES OR INJURIES OR FOR DISABILITY OR
- 12 DEATH CAUSED BY OCCUPATIONAL DISEASES OR INJURIES. WORKERS'
- 13 COMPENSATION LAW INCLUDES THE LONGSHORE AND HARBOR WORKERS'
- 14 COMPENSATION ACT, 33 USC 901 TO 950, AND 5 USC 8101 TO 8193,
- 15 POPULARLY KNOWN AS THE FEDERAL EMPLOYEES' COMPENSATION ACT.
- 16 WORKERS' COMPENSATION LAW DOES NOT INCLUDE 45 USC 51 TO 60.
- 17 POPULARLY KNOWN AS THE FEDERAL EMPLOYERS' LIABILITY ACT.
- 18 SEC. 3005. (1) A PERSON IS NOT ENTITLED TO ASSERT AN ASBESTOS
- 19 CLAIM OR A SILICA CLAIM UNLESS THE EXPOSED PERSON HAS A PHYSICAL
- 20 IMPAIRMENT TO WHICH ASBESTOS OR SILICA EXPOSURE WAS A SUBSTANTIAL
- 21 CONTRIBUTING FACTOR.
- 22 (2) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION
- 23 ALLEGING AN ASBESTOS CLAIM BASED ON A NONMALIGNANT CONDITION UNLESS
- 24 THE PERSON MAKES A PRIMA FACIE SHOWING THAT THE EXPOSED PERSON HAS
- 25 OR HAD A PHYSICAL IMPAIRMENT RESULTING FROM A MEDICAL CONDITION TO
- 26 WHICH EXPOSURE TO ASBESTOS WAS A SUBSTANTIAL CONTRIBUTING FACTOR. A
- 27 PRIMA FACIE SHOWING REQUIRED BY THIS SUBSECTION INCLUDES, AT A

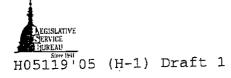
- 1 MINIMUM, ALL OF THE FOLLOWING:
- 2 (A) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A
- 3 DETAILED OCCUPATIONAL AND EXPOSURE HISTORY OF THE EXPOSED PERSON
- 4 OR, IF THE EXPOSED PERSON IS DECEASED, FROM A PERSON WHO IS
- 5 KNOWLEDGEABLE ABOUT THE EXPOSURES THAT FORM THE BASIS OF THE
- 6 ASBESTOS CLAIM, INCLUDING BOTH OF THE FOLLOWING:
- 7 (i) THE IDENTIFICATION OF ALL OF THE EXPOSED PERSON'S PRINCIPAL
- 8 PLACES OF EMPLOYMENT AND EXPOSURES TO AIRBORNE CONTAMINANTS.
- 9 (ii) WHETHER EACH PLACE OF EMPLOYMENT INVOLVED EXPOSURES TO
- 10 AIRBORNE CONTAMINANTS, INCLUDING, BUT NOT LIMITED TO, ASBESTOS
- 11 FIBERS OR OTHER DISEASE CAUSING DUSTS, THAT CAN CAUSE PULMONARY
- 12 IMPAIRMENT AND THE NATURE, DURATION, AND LEVEL OF EACH EXPOSURE.
- 13 (B) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A
- 14 DETAILED MEDICAL AND SMOKING HISTORY, INCLUDING A THOROUGH REVIEW
- 15 OF THE EXPOSED PERSON'S PAST AND PRESENT MEDICAL PROBLEMS AND THE
- 16 MOST PROBABLE CAUSE OF THE PROBLEMS.
- 17 (C) A DETERMINATION BY A QUALIFIED PHYSICIAN, ON THE BASIS OF
- 18 A MEDICAL EXAMINATION AND PULMONARY FUNCTION TESTING, THAT THE
- 19 EXPOSED PERSON HAS OR HAD A PERMANENT RESPIRATORY IMPAIRMENT RATING
- 20 OF AT LEAST CLASS 2 AS DEFINED BY AND EVALUATED PURSUANT TO THE AMA
- 21 GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT.
- 22 (D) A DIAGNOSIS BY A QUALIFIED PHYSICIAN OF ASBESTOSIS OR
- 23 DIFFUSE PLEURAL THICKENING, BASED AT A MINIMUM ON RADIOLOGICAL OR
- 24 PATHOLOGICAL EVIDENCE OF ASBESTOSIS OR RADIOLOGICAL EVIDENCE OF
- 25 DIFFUSE PLEURAL THICKENING.
- 26 (E) A DETERMINATION BY A QUALIFIED PHYSICIAN THAT ASBESTOSIS
- 27 OR DIFFUSE PLEURAL THICKENING, RATHER THAN CHRONIC OBSTRUCTIVE



- 1 PULMONARY DISEASE, IS OR WAS A SUBSTANTIAL CONTRIBUTING FACTOR TO
- 2 THE EXPOSED PERSON'S PHYSICAL IMPAIRMENT, BASED AT A MINIMUM ON A
- 3 DETERMINATION THAT THE EXPOSED PERSON HAS OR HAD 1 OR MORE OF THE
- 4 FOLLOWING:
- 5 (i) TOTAL LUNG CAPACITY, BY PLETHYSMOGRAPHY OR TIMED GAS
- 6 DILUTION, BELOW THE PREDICTED LOWER LIMIT OF NORMAL.
- 7 (ii) FVC BELOW THE LOWER LIMIT OF NORMAL AND A RATIO OF FEV1 TO
- 8 FVC THAT IS EQUAL TO OR GREATER THAN THE PREDICTED LOWER LIMIT OF
- 9 NORMAL.
- 10 (iii) A CHEST X-RAY SHOWING SMALL, IRREGULAR OPACITIES (S, T)
- 11 GRADED BY A CERTIFIED "B" READER AT LEAST 2/1 ON THE ILO SCALE.
- 12 (F) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
- 13 PERSON'S MEDICAL FINDINGS AND IMPAIRMENT WERE NOT MORE PROBABLY THE
- 14 RESULT OF CAUSES OTHER THAN THE ASBESTOS EXPOSURE REVEALED BY THE
- 15 EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.
- 16 (3) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION
- 17 ALLEGING AN ASBESTOS CLAIM BASED ON LUNG CANCER UNLESS THE PERSON
- 18 MAKES A PRIMA FACIE SHOWING THAT INCLUDES, AT A MINIMUM, ALL OF THE
- 19 FOLLOWING:
- 20 (A) DIAGNOSIS BY A QUALIFIED PHYSICIAN WHO IS BOARD-CERTIFIED
- 21 IN PATHOLOGY, PULMONARY MEDICINE, OR ONCOLOGY OF A PRIMARY LUNG
- 22 CANCER AND THAT EXPOSURE TO ASSESTOS WAS A SUBSTANTIAL CONTRIBUTING
- 23 FACTOR TO THE CANCER.
- 24 (B) EVIDENCE SUFFICIENT TO DEMONSTRATE THAT AT LEAST 10 YEARS
- 25 HAVE ELAPSED BETWEEN THE DATE OF FIRST EXPOSURE TO ASBESTOS AND THE
- 26 DATE OF DIAGNOSIS OF THE LUNG CANCER.
- 27 (C) EITHER OF THE FOLLOWING:

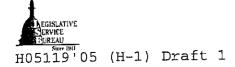


- 1 (i) IF THE EXPOSED PERSON IS A NONSMOKER, EITHER OF THE
- 2 FOLLOWING:
- 3 (A) RADIOLOGICAL OR PATHOLOGICAL EVIDENCE OF ASBESTOSIS.
- 4 (B) EVIDENCE OF OCCUPATIONAL EXPOSURE TO ASBESTOS FOR 1 OR
- 5 MORE OF THE FOLLOWING MINIMUM EXPOSURE PERIODS:
- 6 (I) FIVE EXPOSURE YEARS IF THE EXPOSED PERSON WAS AN
- 7 INSULATOR, SHIPYARD WORKER, WORKER IN A MANUFACTURING PLANT
- 8 HANDLING RAW ASBESTOS, BOILERMAKER, SHIPFITTER, OR STEAMFITTER OR
- 9 WORKED IN ANOTHER TRADE PERFORMING SIMILAR FUNCTIONS.
- 10 (II) TEN EXPOSURE YEARS IF THE EXPOSED PERSON WAS A UTILITY OR
- 11 POWER HOUSE WORKER OR SECONDARY MANUFACTURING WORKER OR WORKED IN
- 12 ANOTHER TRADE PERFORMING SIMILAR FUNCTIONS.
- 13 (III) FIFTEEN EXPOSURE YEARS IF THE EXPOSED PERSON WAS IN
- 14 GENERAL CONSTRUCTION, A MAINTENANCE WORKER, A CHEMICAL OR REFINERY
- 15 WORKER, MARINE ENGINE ROOM PERSONNEL OR OTHER PERSONNEL ON A
- 16 VESSEL, A STATIONARY ENGINEER OR FIREMAN, OR A RAILROAD ENGINE
- 17 REPAIR WORKER OR WORKED IN ANOTHER TRADE PERFORMING SIMILAR
- 18 FUNCTIONS.
- 19 (ii) IF THE EXPOSED PERSON IS A SMOKER, THE REQUIREMENTS OF
- 20 BOTH SUB-SUBPARAGRAPHS (A) AND (B) OF SUBPARAGRAPH (i).
- 21 (D) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
- 22 PERSON'S MEDICAL FINDINGS AND PHYSICAL IMPAIRMENT WERE NOT MORE
- 23 PROBABLY THE RESULT OF CAUSES OTHER THAN THE ASBESTOS EXPOSURE
- 24 REVEALED BY THE EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.
- 25 (4) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION
- 26 ALLEGING AN ASBESTOS CLAIM BASED ON CANCER OF THE COLON, RECTUM,
- 27 LARYNX, PHARYNX, ESOPHAGUS, OR STOMACH UNLESS THE PERSON MAKES A

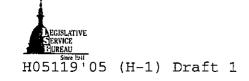


- 1 PRIMA FACIE SHOWING THAT INCLUDES, AT A MINIMUM, ALL OF THE
- 2 FOLLOWING:
- 3 (A) A DIAGNOSIS BY A QUALIFIED PHYSICIAN WHO IS BOARD-
- 4 CERTIFIED IN PATHOLOGY, PULMONARY MEDICINE, OR ONCOLOGY OF PRIMARY
- 5 CANCER OF THE COLON, RECTUM, LARYNX, PHARYNX, ESOPHAGUS, OR
- 6 STOMACH, AS APPLICABLE, AND THAT EXPOSURE TO ASBESTOS WAS A
- 7 SUBSTANTIAL CONTRIBUTING FACTOR TO THE CANCER.
- 8 (B) EVIDENCE SUFFICIENT TO DEMONSTRATE THAT AT LEAST 10 YEARS
- 9 HAVE ELAPSED BETWEEN THE DATE OF FIRST EXPOSURE TO ASBESTOS AND THE
- 10 DATE OF DIAGNOSIS OF THE CANCER.
- 11 (C) ONE OR BOTH OF THE FOLLOWING:
- 12 (i) RADIOLOGICAL OR PATHOLOGICAL EVIDENCE OF ASBESTOSIS.
- 13 (ii) EVIDENCE OF OCCUPATIONAL EXPOSURE TO ASBESTOS FOR 1 OR
- 14 MORE OF THE FOLLOWING MINIMUM EXPOSURE PERIODS:
- 15 (A) FIVE EXPOSURE YEARS IF THE EXPOSED PERSON WAS AN
- 16 INSULATOR, SHIPYARD WORKER, WORKER IN A MANUFACTURING PLANT
- 17 HANDLING RAW ASBESTOS, BOILERMAKER, SHIPFITTER, OR STEAMFITTER OR
- 18 WORKER IN ANOTHER TRADE PERFORMING SIMILAR FUNCTIONS.
- 19 (B) TEN EXPOSURE YEARS IF THE EXPOSED PERSON WAS A UTILITY OR
- 20 POWER HOUSE WORKER OR SECONDARY MANUFACTURING WORKER OR WORKER IN
- 21 ANOTHER TRADE PERFORMING SIMILAR FUNCTIONS.
- 22 (C) FIFTEEN EXPOSURE YEARS IF THE EXPOSED PERSON WAS IN
- 23 GENERAL CONSTRUCTION, A MAINTENANCE WORKER, A CHEMICAL OR REFINERY
- 24 WORKER, MARINE ENGINE ROOM PERSONNEL OR OTHER PERSONNEL ON A
- 25 VESSEL, A STATIONARY ENGINEER OR FIREMAN, A RAILROAD ENGINE REPAIR
- 26 WORKER, OR A WORKER IN ANOTHER TRADE PERFORMING SIMILAR FUNCTIONS.
- 27 (D) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED

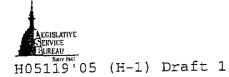
- 1 PERSON'S MEDICAL FINDINGS AND PHYSICAL IMPAIRMENT WERE NOT MORE
- 2 PROBABLY THE RESULT OF CAUSES OTHER THAN THE ASBESTOS EXPOSURE
- 3 REVEALED BY THE EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.
- 4 (5) A PRIMA FACIE SHOWING UNDER THIS SECTION IS NOT REQUIRED
- 5 IN A CIVIL ACTION ALLEGING AN ASBESTOS CLAIM BASED ON MESOTHELIOMA.
- 6 (6) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION
- 7 ALLEGING A SILICOSIS CLAIM UNLESS THE PERSON MAKES A PRIMA FACIE
- 8 SHOWING THAT THE EXPOSED PERSON SUFFERED A PHYSICAL IMPAIRMENT AS A
- 9 RESULT OF A MEDICAL CONDITION TO WHICH EXPOSURE TO SILICA WAS A
- 10 SUBSTANTIAL CONTRIBUTING FACTOR. A PRIMA FACIE SHOWING UNDER THIS
- 11 SUBSECTION SHALL INCLUDE, AT A MINIMUM, ALL OF THE FOLLOWING:
- 12 (A) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A
- 13 DETAILED OCCUPATIONAL AND EXPOSURE HISTORY OF THE EXPOSED PERSON
- 14 OR, IF THE EXPOSED PERSON IS DECEASED, FROM A PERSON WHO IS
- 15 KNOWLEDGEABLE ABOUT THE EXPOSURES THAT FORM THE BASIS OF THE
- 16 NONMALIGNANT SILICA CLAIM, WHICH HISTORY INCLUDES ALL OF THE
- 17 FOLLOWING:
- 18 (i) ALL OF THE EXPOSED PERSON'S PRINCIPAL PLACES OF EMPLOYMENT
- 19 AND EXPOSURES TO AIRBORNE CONTAMINANTS.
- 20 (ii) WHETHER EACH PLACE OF EMPLOYMENT INVOLVED EXPOSURES TO
- 21 AIRBORNE CONTAMINANTS, INCLUDING, BUT NOT LIMITED TO, SILICA
- 22 PARTICLES OR OTHER DISEASE CAUSING DUSTS, THAT CAN CAUSE PULMONARY
- 23 IMPAIRMENT AND THE NATURE, DURATION, AND LEVEL OF ANY SUCH
- 24 EXPOSURE.
- 25 (B) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A
- 26 DETAILED MEDICAL AND SMOKING HISTORY, INCLUDING A THOROUGH REVIEW
- 27 OF THE EXPOSED PERSON'S PAST AND PRESENT MEDICAL PROBLEMS AND THE



- 1 MOST PROBABLE CAUSE OF THE PROBLEMS, AND VERIFYING A SUFFICIENT
- 2 LATENCY PERIOD FOR THE APPLICABLE STAGE OF SILICOSIS.
- 3 (C) A DETERMINATION BY A QUALIFIED PHYSICIAN, ON THE BASIS OF
- 4 A MEDICAL EXAMINATION AND PULMONARY FUNCTION TESTING, THAT THE
- 5 EXPOSED PERSON HAS A PERMANENT RESPIRATORY IMPAIRMENT RATING OF AT
- 6 LEAST CLASS 2 AS DEFINED BY AND EVALUATED PURSUANT TO THE AMA
- 7 GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT.
- 8 (D) A DETERMINATION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
- 9 PERSON HAS EITHER OF THE FOLLOWING:
- 10 (i) A QUALITY 1 CHEST X-RAY UNDER THE ILO SCALE OR, IF THE
- 11 EXPOSED PERSON IS DECEASED AND PATHOLOGY AND QUALITY 1 X-RAY ARE
- 12 NOT AVAILABLE, A QUALITY 2 X-RAY, THAT HAS BEEN READ BY A CERTIFIED
- 13 "B" READER AS SHOWING, ACCORDING TO THE ILO SCALE, BILATERAL
- 14 NODULAR OPACITIES (P, Q, OR R) OCCURRING PRIMARILY IN THE UPPER
- 15 LUNG FIELDS, GRADED 1/1 OR HIGHER.
- 16 (ii) PATHOLOGICAL DEMONSTRATION OF CLASSIC SILICOTIC NODULES
- 17 EXCEEDING 1 CENTIMETER IN DIAMETER AS PUBLISHED IN 112 ARCHIVE OF
- 18 PATHOLOGY AND LABORATORY MEDICINE 7 (JULY 1988).
- 19 (E) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
- 20 PERSON'S MEDICAL FINDINGS AND IMPAIRMENT WERE NOT MORE PROBABLY THE
- 21 RESULT OF CAUSES OTHER THAN THE SILICA EXPOSURE REVEALED BY THE
- 22 EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.
- 23 (7) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION
- 24 ALLEGING A SILICA CLAIM OTHER THAN A CLAIM DESCRIBED IN SUBSECTION
- 25 (6) UNLESS THE PERSON MAKES A PRIMA FACIE SHOWING THAT INCLUDES, AT
- 26 A MINIMUM, ALL OF THE FOLLOWING:
- 27 (A) A REPORT THAT MEETS EITHER OF THE FOLLOWING REQUIREMENTS:

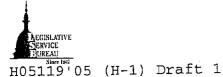


- 1 (i) THE REPORT IS BY A PHYSICIAN WHO IS BOARD-CERTIFIED IN
- 2 PULMONARY MEDICINE, INTERNAL MEDICINE, ONCOLOGY, OR PATHOLOGY AND
- 3 STATES A DIAGNOSIS OF THE EXPOSED PERSON OF SILICA-RELATED LUNG
- 4 CANCER AND THAT, TO A REASONABLE DEGREE OF MEDICAL PROBABILITY,
- 5 EXPOSURE TO SILICA WAS A SUBSTANTIAL CONTRIBUTING FACTOR TO THE
- 6 DIAGNOSED LUNG CANCER.
- 7 (ii) THE REPORT IS BY A PHYSICIAN WHO IS BOARD-CERTIFIED IN
- 8 PULMONARY MEDICINE, INTERNAL MEDICINE, OR PATHOLOGY AND STATES A
- 9 DIAGNOSIS OF THE EXPOSED PERSON OF SILICA-RELATED PROGRESSIVE
- 10 MASSIVE FIBROSIS OR ACUTE SILICOPROTEINOSIS OR OF SILICOSIS
- 11 COMPLICATED BY DOCUMENTED TUBERCULOSIS.
- 12 (B) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A
- 13 DETAILED OCCUPATIONAL AND EXPOSURE HISTORY OF THE EXPOSED PERSON
- 14 OR, IF THE EXPOSED PERSON IS DECEASED, FROM A PERSON WHO IS
- 15 KNOWLEDGEABLE ABOUT THE EXPOSURES THAT FORM THE BASIS OF THE
- 16 NONMALIGNANT SILICA CLAIM, WHICH HISTORY INCLUDES BOTH OF THE
- 17 FOLLOWING:
- 18 (i) ALL OF THE EXPOSED PERSON'S PRINCIPAL PLACES OF EMPLOYMENT
- 19 AND EXPOSURES TO AIRBORNE CONTAMINANTS.
- 20 (ii) WHETHER EACH PLACE OF EMPLOYMENT INVOLVED EXPOSURES TO
- 21 AIRBORNE CONTAMINANTS, INCLUDING, BUT NOT LIMITED TO, SILICA
- 22 PARTICLES OR OTHER DISEASE CAUSING DUSTS, THAT CAN CAUSE PULMONARY
- 23 IMPAIRMENT AND THE NATURE, DURATION, AND LEVEL OF THE EXPOSURE.
- 24 (C) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A
- 25 DETAILED MEDICAL AND SMOKING HISTORY, INCLUDING A THOROUGH REVIEW
- 26 OF THE EXPOSED PERSON'S PAST AND PRESENT MEDICAL PROBLEMS AND THE
- 27 MOST PROBABLE CAUSE OF THE PROBLEMS.

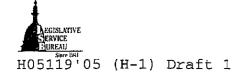


- 1 (D) A DETERMINATION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
- 2 PERSON HAS EITHER OF THE FOLLOWING:
- 3 (i) A QUALITY 1 CHEST X-RAY UNDER THE ILO SCALE OR, IF THE
- 4 EXPOSED PERSON IS DECEASED AND PATHOLOGY AND A QUALITY 1 CHEST X-
- 5 RAY ARE NOT AVAILABLE, A QUALITY 2 CHEST X-RAY, THAT HAS BEEN READ
- 6 BY A CERTIFIED "B" READER AS SHOWING, ACCORDING TO THE ILO SCALE,
- 7 BILATERAL NODULAR OPACITIES (P, Q, OR R) OCCURRING PRIMARILY IN THE
- 8 UPPER LUNG FIELDS, GRADED 1/1 OR HIGHER.
- 9 (ii) PATHOLOGICAL DEMONSTRATION OF CLASSIC SILICOTIC NODULES
- 10 EXCEEDING 1 CENTIMETER IN DIAMETER AS PUBLISHED IN 112 ARCHIVE OF
- 11 PATHOLOGY AND LABORATORY MEDICINE 7 (JULY 1988).
- 12 (E) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
- 13 PERSON'S MEDICAL FINDINGS AND IMPAIRMENT WERE NOT MORE PROBABLY THE
- 14 RESULT OF CAUSES OTHER THAN THE SILICA EXPOSURE REVEALED BY THE
- 15 EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.
- 16 (8) TO QUALIFY FOR CONSIDERATION UNDER THIS SECTION AS
- 17 EVIDENCE RELATING TO PHYSICAL IMPAIRMENT, EVIDENCE, INCLUDING
- 18 PULMONARY FUNCTION TESTING AND DIFFUSING STUDIES, SHALL MEET ALL OF
- 19 THE FOLLOWING CRITERIA:
- 20 (A) COMPLY WITH THE TECHNICAL RECOMMENDATIONS FOR
- 21 EXAMINATIONS, TESTING PROCEDURES, QUALITY ASSURANCE, QUALITY
- 22 CONTROL, AND EQUIPMENT OF THE AMA GUIDES TO THE EVALUATION OF
- 23 PERMANENT IMPAIRMENT, AS SET FORTH IN 20 CFR PART 404, SUBPART P.
- 24 APPENDIX 1, PART A, SECTION 3.00 E. AND F., AND THE INTERPRETIVE
- 25 STANDARDS IN THE OFFICIAL STATEMENT OF THE AMERICAN THORACIC
- 26 SOCIETY ENTITLED "LUNG FUNCTION TESTING: SELECTION OF REFERENCE
- 27 VALUES AND INTERPRETIVE STRATEGIES" AS PUBLISHED IN AMERICAN REVIEW

- 1 OF RESPIRATORY DISEASE, 1991: 144:1202-1218.
- 2 (B) NOT BE OBTAINED THROUGH TESTING OR EXAMINATIONS THAT
- 3 VIOLATE ANY APPLICABLE LAW, REGULATION, LICENSING REQUIREMENT, OR
- 4 MEDICAL CODE OF PRACTICE.
- 5 (C) NOT BE OBTAINED UNDER THE CONDITION THAT THE EXPOSED
- 6 PERSON RETAIN LEGAL SERVICES IN EXCHANGE FOR THE EXAMINATION, TEST,
- 7 OR SCREENING.
- 8 (9) FOR PURPOSES OF THIS SECTION, THE NUMBER OF EXPOSURE YEARS
- 9 SHALL BE DETERMINED AS FOLLOWS:
- 10 (A) EACH SINGLE YEAR OF EXPOSURE PRIOR TO 1972 SHALL BE
- 11 COUNTED AS 1 YEAR.
- 12 (B) SUBJECT TO SUBDIVISION (D), EACH SINGLE YEAR OF EXPOSURE
- 13 FROM 1972 THROUGH 1979 SHALL BE COUNTED AS 1/2 YEAR.
- 14 (C) SUBJECT TO SUBDIVISION (D), EXPOSURE AFTER 1979 SHALL NOT
- 15 BE COUNTED.
- 16 (D) EACH YEAR AFTER 1971 FOR WHICH THE PLAINTIFF CAN ESTABLISH
- 17 EXPOSURE EXCEEDING THE UNITED STATES DEPARTMENT OF LABOR
- 18 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION LIMIT FOR 8-HOUR
- 19 TIME-WEIGHTED AVERAGE AIRBORNE CONCENTRATION FOR A SUBSTANTIAL
- 20 PORTION OF THE YEAR SHALL BE COUNTED AS 1 YEAR.
- 21 (10) ALL OF THE FOLLOWING APPLY TO A RULING BY A COURT THAT A
- 22 PLAINTIFF HAS SATISFACTORILY PRESENTED PRIMA FACIE EVIDENCE TO MEET
- 23 THE APPLICABLE REQUIREMENTS OF THIS SECTION:
- 24 (A) THE RULING DOES NOT RAISE A PRESUMPTION AT TRIAL THAT THE
- 25 EXPOSED PERSON IS IMPAIRED BY AN ASBESTOS- OR SILICA-RELATED
- 26 CONDITION.
- 27 (B) THE RULING IS NOT CONCLUSIVE AS TO THE LIABILITY OF ANY



- 1 DEFENDANT.
- 2 (C) THE RULING IS NOT ADMISSIBLE AT TRIAL.
- 3 SEC. 3007. (1) A COURT MAY CONSOLIDATE FOR TRIAL ANY NUMBER
- 4 AND TYPE OF ASBESTOS OR SILICA CLAIMS IF ALL OF THE PARTIES TO THE
- 5 CLAIMS CONSENT. IF ALL OF THE PARTIES TO THE CLAIMS DO NOT CONSENT,
- 6 THE COURT MAY CONSOLIDATE FOR TRIAL ONLY ASBESTOS OR SILICA CLAIMS
- 7 RELATING TO THE SAME EXPOSED PERSON AND MEMBERS OF THE EXPOSED
- 8 PERSON'S HOUSEHOLD.
- 9 (2) A CIVIL ACTION ALLEGING AN ASBESTOS OR SILICA CLAIM MAY
- 10 ONLY BE BROUGHT IN THIS STATE IF THE EXPOSURE TO ASBESTOS OR SILICA
- 11 ON WHICH THE CLAIM IS BASED OCCURRED IN THIS STATE.
- 12 (3) THE PLAINTIFF IN A CIVIL ACTION ALLEGING AN ASBESTOS OR
- 13 SILICA CLAIM SHALL FILE WITH THE COMPLAINT OR OTHER INITIAL
- 14 PLEADING A WRITTEN REPORT AND SUPPORTING TEST RESULTS THAT
- 15 CONSTITUTE PRIMA FACIE EVIDENCE OF THE EXPOSED PERSON'S ASBESTOS-
- 16 OR SILICA-RELATED PHYSICAL IMPAIRMENT THAT MEETS THE APPLICABLE
- 17 REQUIREMENTS OF SECTION 3005. IN AN ASBESTOS OR SILICA CLAIM
- 18 PENDING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
- 19 CHAPTER, THE PLAINTIFF SHALL FILE A WRITTEN REPORT AND SUPPORTING
- 20 TEST RESULTS THAT COMPLY WITH THIS SUBSECTION NOT LATER THAN 60
- 21 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
- 22 CHAPTER OR 30 DAYS BEFORE THE COMMENCEMENT OF TRIAL OF THE ACTION,
- 23 WHICHEVER OCCURS FIRST.
- 24 (4) A COURT SHALL GIVE A DEFENDANT IN A CIVIL ACTION THAT
- 25 INCLUDES AN ASBESTOS OR SILICA CLAIM A REASONABLE OPPORTUNITY TO
- 26 CHALLENGE THE ADEQUACY OF PRIMA FACIE EVIDENCE OF AN ASBESTOS- OR
- 27 SILICA-RELATED IMPAIRMENT OFFERED UNDER THIS CHAPTER.



- 1 (5) IF A COURT DETERMINES THAT A PLAINTIFF HAS FAILED TO MAKE
- 2 THE PRIMA FACIE SHOWING REQUIRED BY THIS CHAPTER, THE PLAINTIFF'S
- 3 CLAIM SHALL BE DISMISSED WITHOUT PREJUDICE.
- 4 SEC. 3009. (1) THE PERIOD OF LIMITATIONS FOR AN ASBESTOS OR
- 5 SILICA CLAIM THAT IS NOT BARRED AS OF THE EFFECTIVE DATE OF THE
- 6 AMENDATORY ACT THAT ADDED THIS CHAPTER ACCRUES WHEN THE EXPOSED
- 7 PERSON DISCOVERS, OR THROUGH THE EXERCISE OF REASONABLE DILIGENCE
- 8 SHOULD HAVE DISCOVERED, THAT HE OR SHE IS PHYSICALLY IMPAIRED BY AN
- 9 ASBESTOS- OR SILICA-RELATED CONDITION.
- 10 (2) AN ASBESTOS OR SILICA CLAIM ARISING OUT OF A NONMALIGNANT
- 11 CONDITION IS A DISTINCT CAUSE OF ACTION FROM AN ASBESTOS OR SILICA
- 12 CLAIM RELATING TO THE SAME EXPOSED PERSON ARISING OUT OF ASBESTOS-
- 13 OR SILICA-RELATED CANCER.
- 14 (3) DAMAGES FOR FEAR OR RISK OF CANCER SHALL NOT BE AWARDED IN
- 15 A CIVIL ACTION ASSERTING AN ASBESTOS OR SILICA CLAIM.
- 16 (4) THE SETTLEMENT OF A NONMALIGNANT ASBESTOS OR SILICA CLAIM
- 17 CONCLUDED AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
- 18 THIS CHAPTER SHALL NOT REQUIRE, AS A CONDITION OF THE SETTLEMENT,
- 19 THE RELEASE OF ANY FUTURE CLAIM FOR ASBESTOS OR SILICA-RELATED
- 20 CANCER.
- SEC. 3011. (1) THE LIMITATIONS ON DAMAGES, AS ADJUSTED, IN
- 22 SECTION 2946A APPLY IN A CIVIL ACTION THAT INCLUDES AN ASBESTOS
- 23 CLAIM, REGARDLESS OF WHETHER THE ACTION IS A PRODUCT LIABILITY
- 24 ACTION.
- 25 (2) PUNITIVE DAMAGES SHALL NOT BE AWARDED IN A CIVIL ACTION
- 26 THAT INCLUDES AN ASBESTOS OR SILICA CLAIM.
- 27 (3) AT THE TIME A COMPLAINT IS FILED IN A CIVIL ACTION THAT

- 1 INCLUDES AN ASBESTOS OR SILICA CLAIM, THE PLAINTIFF SHALL FILE A
- 2 VERIFIED WRITTEN REPORT WITH THE COURT THAT DISCLOSES THE TOTAL
- 3 AMOUNT OF ANY COLLATERAL SOURCE PAYMENTS RECEIVED, INCLUDING
- 4 PAYMENTS THE PLAINTIFF WILL RECEIVE IN THE FUTURE, AS A RESULT OF
- 5 SETTLEMENTS OR JUDGMENTS BASED ON THE SAME CLAIM. IN A CIVIL ACTION
- 6 ALLEGING AN ASBESTOS OR SILICA CLAIM PENDING ON THE EFFECTIVE DATE
- 7 OF THE AMENDATORY ACT THAT ADDED THIS CHAPTER, THE PLAINTIFF SHALL
- 8 FILE THE VERIFIED WRITTEN REPORT REQUIRED BY THIS SUBSECTION NOT
- 9 LATER THAN 60 DAYS AFTER THE EFFECTIVE DATE OF THE ACT THAT ADDED
- 10 THIS CHAPTER OR 30 DAYS BEFORE THE COMMENCEMENT OF TRIAL OF THE
- 11 ACTION, WHICHEVER OCCURS FIRST.
- 12 (4) A PLAINTIFF IN A CIVIL ACTION THAT INCLUDES AN ASBESTOS OR
- 13 SILICA CLAIM SHALL FILE UPDATED REPORTS DISCLOSING THE TOTAL AMOUNT
- 14 OF COLLATERAL SOURCE PAYMENTS RECEIVED, OR TO BE RECEIVED IN THE
- 15 FUTURE, ON A REGULAR BASIS UNTIL A FINAL JUDGMENT IS ENTERED IN THE
- 16 ACTION.
- 17 (5) A COURT SHALL ENSURE THAT INFORMATION CONTAINED IN THE
- 18 INITIAL AND UPDATED REPORTS REQUIRED BY SUBSECTIONS (3) AND (4) ARE
- 19 TREATED AS PRIVILEGED AND CONFIDENTIAL AND THAT THE CONTENTS OF THE
- 20 REPORTS ARE NOT DISCLOSED TO ANYONE EXCEPT THE OTHER PARTIES TO THE
- 21 ACTION.
- 22 SEC. 3013. A MANUFACTURER OF A PRODUCT IS ONLY LIABLE FOR
- 23 DAMAGES IN AN ASBESTOS CLAIM OR A SILICA CLAIM UNDER 1 OR MORE OF
- 24 THE FOLLOWING LEGAL THEORIES:
- 25 (A) FAILURE TO WARN.
- 26 (B) FAILURE TO TEST.
- 27 (C) NEGLIGENT DESIGN.



- 1 (D) BREACH OF IMPLIED WARRANTY.
- 2 (E) GROSS NEGLIGENCE.
- 3 SEC. 3015. (1) A PRODUCT SELLER OTHER THAN A MANUFACTURER IS
- 4 LIABLE TO A PLAINTIFF IN A CIVIL ACTION THAT INCLUDES AN ASBESTOS
- 5 OR SILICA CLAIM ONLY IF THE PLAINTIFF ESTABLISHES 1 OR MORE OF THE
- 6 FOLLOWING:
- 7 (A) ALL OF THE FOLLOWING:
- 8 (i) THE PRODUCT THAT ALLEGEDLY CAUSED THE HARM THAT IS THE
- 9 SUBJECT OF THE COMPLAINT WAS SOLD, RENTED, OR LEASED BY THE PRODUCT
- 10 SELLER.
- 11 (ii) THE PRODUCT SELLER FAILED TO EXERCISE REASONABLE CARE WITH
- 12 RESPECT TO THE PRODUCT.
- 13 (iii) THE FAILURE TO EXERCISE REASONABLE CARE WAS A PROXIMATE
- 14 CAUSE OF THE HARM TO THE EXPOSED PERSON.
- 15 (B) ALL OF THE FOLLOWING:
- 16 (i) THE PRODUCT SELLER MADE AN EXPRESS WARRANTY APPLICABLE TO
- 17 THE PRODUCT THAT ALLEGEDLY CAUSED THE HARM THAT IS THE SUBJECT OF
- 18 THE COMPLAINT, INDEPENDENT OF ANY EXPRESS WARRANTY MADE BY THE
- 19 MANUFACTURER AS TO THE SAME PRODUCT.
- 20 (ii) THE PRODUCT FAILED TO CONFORM TO THE WARRANTY.
- 21 (iii) THE FAILURE OF THE PRODUCT TO CONFORM TO THE WARRANTY
- 22 CAUSED THE HARM TO THE EXPOSED PERSON.
- 23 (C) BOTH OF THE FOLLOWING:
- 24 (i) THE PRODUCT SELLER ENGAGED IN INTENTIONAL WRONGDOING, AS
- 25 DETERMINED UNDER APPLICABLE STATE LAW.
- 26 (ii) THE INTENTIONAL WRONGDOING CAUSED THE HARM THAT IS THE
- 27 SUBJECT OF THE COMPLAINT.



- 1 (2) FOR PURPOSES OF SUBSECTION (1)(A)(ii), A PRODUCT SELLER'S
- 2 FAILURE TO INSPECT THE PRODUCT IS NOT A FAILURE TO EXERCISE
- 3 REASONABLE CARE WITH RESPECT TO THE PRODUCT IF EITHER OF THE
- 4 FOLLOWING APPLIES:
- 5 (A) THE FAILURE OCCURRED BECAUSE THERE WAS NO REASONABLE
- 6 OPPORTUNITY TO INSPECT THE PRODUCT.
- 7 (B) AN INSPECTION OF THE PRODUCT, IN THE EXERCISE OF
- 8 REASONABLE CARE, WOULD NOT HAVE REVEALED THE ASPECT OF THE PRODUCT
- 9 THAT ALLEGEDLY CAUSED THE EXPOSED PERSON'S IMPAIRMENT.
- 10 (3) IN A CIVIL ACTION THAT INCLUDES AN ASBESTOS OR SILICA
- 11 CLAIM, A PERSON ENGAGED IN THE BUSINESS OF RENTING OR LEASING A
- 12 PRODUCT IS NOT LIABLE FOR THE TORTIOUS ACT OF ANOTHER SOLELY BY
- 13 REASON OF OWNERSHIP OF THE PRODUCT.
- 14 SEC. 3017. THIS CHAPTER DOES NOT AFFECT THE SCOPE OR OPERATION
- 15 OF ANY WORKERS' COMPENSATION LAW OR VETERANS' BENEFIT PROGRAM OR
- 16 THE EXCLUSIVE REMEDY OR SUBROGATION PROVISIONS OF ANY SUCH LAW OR
- 17 AUTHORIZE ANY DAWSUIT THAT IS BARRED BY SUCH LAW.
- 18 (SEC. 3019.) THIS CHAPTER APPLIES TO A CIVIL ACTION THAT
- 19 INCLUDES AN ASBESTOS OR SILICA CLAIM IN WHICH TRIAL HAS NOT
- 20 COMMENCED AS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
- 21 THIS CHAPTER.
- 22 Sec. 5827. Except as otherwise expressly provided, the period
- 23 of limitations runs from the time the claim accrues. The claim
- 24 accrues at the time provided in sections 5829 to 5838 5840, and
- 25 in cases not covered by these sections the claim accrues at the
- 26 time the wrong upon which the claim is based was done regardless of
- 27 the time when damage results.



- SEC. 5840. (1) AN ASBESTOS OR SILICA CLAIM DESCRIBED IN 1
- SECTION 3009(1) ACCRUES AS PROVIDED IN SECTION 3009(1).
- (2) AS USED IN THIS SECTION:
- (A) "ASBESTOS CLAIM" MEANS THAT TERM AS DEFINED IN SECTION
- 3001.
- (B) "SILICA CLAIM" MEANS THAT TERM AS DEFINED IN SECTION 3003.

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